

The Department's complete rules, regulations and rulings for sales tax are voluminous and can be found on our website at www.iltax.com. (This is a GIL).

February 20, 2003

Dear Xxxxx:

This letter is in response to your letter dated November 1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

Due to the inconsistency of various retailers' interpretation of the rules governing the Retail Sales Tax on Foodstuffs and over-the-counter drugs, I would appreciate your sending me the detailed rules and interpretations that are applicable.

As an example, some retailers charge 2%, while others charge the general merchandise tax on such items as rubbing alcohol, chocolate drinks, psoriasis shampoo, toothpaste, etc.

On installed items, such as water heaters and carpeting, I know the labor charge is non taxable, but some charge tax on the product, while others do not. Some stores charge tax on Xerox copies, while others say it is not taxable.

I would appreciate your sending me a copy of the complete rules and interpretations that apply.

Our complete rules, regulations and rulings are quite voluminous and can be found on our website at www.iltax.com. Attached to this letter are the specific regulations that govern the topics you discussed in your letter.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sale of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1).

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold, 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority (over 50%) of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts from food sales were for items sold in bulk, they would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages).

A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." (See Section 130.310(c)(1).)

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real

property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

For your information, we have enclosed a copy of the Department's regulation regarding "Sellers of Floor Coverings." See 86 Ill. Adm. Code 130.2101, enclosed. Sellers who make sales of floor coverings to users in retail sale situations incur Retailers' Occupation Tax liability on their gross receipts from such sales. Sellers who make sales of floor coverings to users in construction contract situations incur tax liability on the cost price of the floor coverings.

Subsection 130.2101(c) describes retail sale situations. In general, a sales contract that does not require the seller (or the seller's representative) to permanently affix the floor covering to real estate constitutes a "sale at retail." However, in some situations, the seller (or seller's representative) will permanently affix the floor covering to real estate. In that case, the transaction remains a retail transaction if the "safe harbor" rule is followed. The "safe harbor" rule provides that

"[a] contract or similar document that provides that the seller (or the seller's representative) will install the floor covering by permanently affixing it to real estate evidences a 'sale at retail' where the contract or similar document demonstrates that the seller and the customer agreed to the installation charge separately from the selling price of the floor covering. The evidence required to be maintained by the seller to demonstrate that the seller and the customer agreed to the installation charge separately from the selling price of the floor covering is a contract or similar document that is signed by the customer and that sets out the following items: selling price of floor covering

(plus) sales tax
subtotal
(plus) installation charges
total
(customer's signature)"

Subsection 130.2101(d) describes construction contract situations. Construction contractors who permanently affix floor coverings to real estate under the terms of construction contracts incur tax liability based on their cost price of the floor covering and materials that they affix to real estate. In a construction contract situation, the construction contractor does not incur Retailers' Occupation Tax liability on his gross receipts from sale. Rather, the construction contractor incurs tax based on his cost price of the floor covering and materials transferred to his customer under the terms of the construction contract. The "safe harbor" rule with regard to construction contract situations provides that

"[a] contract or similar document that provides that the seller (or the seller's representative) will install the floor covering by permanently affixing it to real estate evidences a "construction contract" where the contract or similar document demonstrates that the seller and the customer did not agree to the installation charge

separately from the selling price of the floor covering. The evidence required to be maintained by the seller to demonstrate that the seller and the customer did not agree to the installation charge separately from the selling price of the floor covering is a contract or similar document that sets out the following items: selling price of floor covering, including installation total
(presence or absence of customer's signature is immaterial)"

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.ILtax.com. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.